Institute of
Social Studies

THE POLITICAL ECONOMY OF ANTIMONOPOLY LEGISLATION IN THE EEC, UK AND INDIA: ITS IMPLICATIONS FOR BUSINESS REGULATORY POLICIES IN DEVELOPING COUNTRIES

A Research Paper presented by

German Reano

(Peru)

In Partial Fulfilment of the Requirements for Obtaining the Degree of

MASTER OF ARTS IN DEVELOPMENT STUDIES

Members of the Examining Committee

Professor E.V.K. Fitzgerald
Dr. P. van der Wel

The Hague, December 1991

Enquiries:

Postal Address:
Institute of Social Studies
P.O. Box 90733
2509 LS The Hague
The Netherlands

Telephone -31-70-351 0100
Cables SOCINST
Telex 31491 ISS NL
Telefax -31-70-354 9851

Location:
Baduisweg 251
2597 JR The Hague
The Netherlands

INSTITUTE OF SOCIAL STUDIES

PUBLIC POLICY AND ADMINISTRATION PROGRAMME

1990/1991

Research Paper

by

German Reano

Title

The political economy of antimonopoly legislation in the EEC, UK and India: its implications for business regulatory policies in developing countries

Supervisors

1. E.V.K. Fitzgerald ....

2. P. Van der Wel ....

Submission to MDC

....

TABLE OF CONTENTS

Introduction

a. Historical background

Antimonopoly, antitrust or competition legislation is one of the most important business regulatory policies in developed countries whose main objectives are preventing formation of monopolistic structures and, regulating individual or collective business behaviour which may restrict actual or potential competition.

Before the second world war antitrust legislation existed only in the United States and Canada basically to control mergers and cartels. In contrast, European governments often promoted mergers and cartelization of firms in a number of industries in order to avoid bankruptcies of industrial firms as result of the economic depression of the thirties.

In the postwar period, the focus of policy concern in European countries regarding business behaviour shifted from cartels to restrictive trade practices as consequence of the incidence of two factors.

First, the increasing practice of branding goods was associated to manufacturers takeover of functions previously performed by distributors, reducing competition between dealers by maintaining the resale prices of their products and by exclusive distribution agreements with territorial restrictions.

Second, the growing importance of restrictive trade practices of multinational corporations in international trade, particularly market-sharing agreements, was viewed as a potential obstacle to the unification of the European Common Market. These developments influenced the adoption of antimonopoly legislation in European countries at both national and international level in the context of European Economic Community.

b. Relevance and purpose of the research

Since 1970's antimonopoly legislation has been in the policy agenda of developing countries as result of three major areas of concern:concentration of economic power in large business groups, restriction of internal competition in domestic markets and, restrictive trade practices of multinational corporations in the international trade.

In recent years, many developing countries have enacted or are in the process of enacting specific legislation on restrictive business practices or special provisions in their Constitution and commercial codes (Verma 1988:393).

According to Verma, the following Latinamerican countries have enacted specific legislation in this regard: Argentina (Law 22,262 on Defence of Competition of August 1,1980, replacing the earlier laws of 1919 and 1946); Brazil (Law No.52025 of 1963,replacing Law 4137 of 10 September 1962,concerning the Suppression of Abuses of Economic Power); Chile (Legislative Decree No.211 of 1973 establishing Regulations for the Protection of Free Competition) and in Venezuela, the Congress has submitted a bill on the control of monopolies. Other countries have included certain provisions in general legislation, Colombia (Law No.155 of 1959 and Criminal Code of 1938) and, Peru (General Industries Law of 24 May 1982).

In Asia, restrictive business practices legislation exists in India, Pakistan (Monopolies and Restrictive Trade Practices Ordinance No.V of 1970) and in the group of Newly Industrialized Countries,South Korea, Thailand, Philippines and more recently, Taiwan have certain provisions or are in process of discussing an specific antimonopoly legislation.

In spite of the efforts to devise appropriate legal instruments in a number of countries, a systematic treatment of antimonopoly policies in developing countries is nearly absent in the academic literature (Long 1981:iv). Nevertheless, the general perception is that implementing antimonopoly legislation in developing countries faces serious limitations derived of lobbying of large business groups (Leff 1979:731, Kirkpatrick 1984:207).

Against this background, this paper suggests, based on comparative analysis of design and application of antimonopoly legislation in the European Economic Community, United Kingdom and, India, that tradeoffs in the definition of public interest rather than lack of organization of its intended beneficiaries, explains the relative weak enforcement of antimonopoly legislation in United Kingdom and India.

The selection of EEC, UK and India experiences is based on three considerations. Firstly, the relatively small size of European economies in the group of developed countries determines an emphasis on regulating business behaviour rather than market structure, approach which acquires more relevance for developing countries. Secondly, India is one of the two developing countries, the other one is Pakistan, which has set up an administrative body to enforce antimonopoly legislation. And thirdly, the UNCTAD model law on restrictive business practices for developing countries was elaborated on the basis of these three experiences (UNCTAD 1979).

I. Analytical Framework

1.1. The public interest approach

The public interest approach of regulatory policies emphasize economic rationale, market failure, as the main justification for government regulation of business activity (Spiller 1986:10). Broadly speaking, the rationale of antimonopoly legislation varies according to the object of regulation (market structure and business behaviour), and the level of regulation (domestic markets and foreign trade). The combination of these variables determines the extent of tradeoffs in the definition of public interest.

The conclusions of the folowing analysis are basically two: a) concentrated market structures involve a considerable tradeoff at both levels domestic and foreign trade, particularly in the latter one, determining a flexible approach of regulation of mergers and, b) business restrictive practices are clearly against public interest in the context of free trade agreements but are subject to a significant tradeoff with foreign trade policy objectives in individual countries, especially in developing ones, because of the increasing importance of foreign trade in economic growth strategies.

1.1.1. Rationale for regulating market structure

a. At the level of domestic markets

From a socio-political view, there is a connection between monopoly, as a predominant feature of the economic system, and the structure of power relations in a society. The basic premise is that concentration of economic activity in a few number of firms leads to concentration of political power in the hands of owners and/or managers who exert corporate control.

The phenomenon of aggregate economic concentration is matter of concern because of its social and political implications, mainly the elimination of smaller firms and, a consequent losing of autonomy of government to rule on behalf of public interest. From this argumentation follows that business regulatory policies are necessary for preserving dispersion of economic power, basis of a democratic system (Miller 1962:34).

From a microeconomic perspective, monopoly introduces a distinction between market concentration and market power. The existence of a single producer does not necessarily implies the presence of a monopoly, because the power to set prices above marginal costs depends also on the elasticity of demand. The elasticity of demand is determined by two factors: the existence of substitutive products and the share of spending on specific good or service in the total consumer spending. The lower elasticity of demand, the higher market power to set prices above marginal cost. (Kamerschen 1981:378).

Under these conditions, a monopolistic structure has ambivalent effects. On the one hand, it leads to prices above marginal costs causing an inefficient allocation of resources and determining a sub-optimal level of consumer welfare. On the other hand, a monopoly is associated to scale economies in production, distribution and, technological research and development (Gomulka 1990:49).

The argument of scale economies explains why smaller markets exhibit a higher degree of market concentration. Empirical research on developed and developing economies shows that those economies with smaller (larger) market sizes systematically show higher (lower) levels of industrial concentration (Meller 1978:45). A comparative analysis of industrial concentration in 1969 between Pakistan and United States shows that at the aggregate level, four-firm concentration ratio was one-third higher in Pakistan's industry. If it is assumed that four firms with a total market share of 80 per cent or more constitutes an oligopoly, 25 branches out of 51 had an oligopolistic structure in Pakistan, while in United States only 7 branches out of 51 were in that position (White 1974:280).

b. At the level of foreign trade

Although the phenomenon of business groups, defined as a group of formally independent firms under single common administrative and financial control, owned and control by certain families, have not been associated to technological innovation, because of the relative absence of competitive pressures in the modern industrial sector (Leff 1979:726), its managerial and marketing economies of scale strengthening its capacity to face competition of multinational corporations in the international markets. In some cases, the expansion of groups leads to establish firms abroad which is considered an effective instrument to penetrate foreign markets (Lall 1983:2).

The recognition of scale economies in the activities of groups favours a flexible approach of antimonopoly policy. "Some form of flexible but effective competition policy is desirable, which can minimise the likelihood of adverse impacts in particular cases without losing the benefits accruing from large-scale activity (Kirkpatrick 1984:207).

Thus, it should be noted that process of integration of national markets, like the EEC, are designed to overcome the limitations that small domestic markets imposed on the international competitiveness of industry. Therefore, to restrict the growth of large business in the context of common market agreements, does not contribute to the achievement of one of it essential objectives. On the contrary, it should be expected that governments stimulate mergers in order to get its associated scale economies in marketing and technological innovation.

1.1.2. Rationale for regulating business behaviour

a. At the level of domestic markets

On the grounds of microeconomics, regulation of business behaviour in a context of oligopolistic structure is limited to collusive behaviour, namely cartels or price-fixing agreements, which induce firms to restrict aggregate production and increase prices in order to maximize aggregate profits.

Generally, cartels operate in markets which has two essential features, product homogeneity and, a single market price that is freely observed. The stability of these agreements depends upon monitoring and sanctions, because once the cartel establishes uniform prices at a higher level and reduces the total output through production quotas, firms have incentive to cheat on the cartel producing more than its quota and selling it at a lower price than agreed. An implication for policy is that increasing the costs of operating a cartel by making illegal its mechanisms of information exchange about price and production and, imposing of penalties to cartel infractors may reduce the sustainability of some cartels and alter the optimal switching in a way that improves welfare (Lanning 1987:172).

The inclusion of the concept of product differentiation shifts the regulatory focus of business behaviour from cartels to restrictive trade practices. Even in the presence of several firms producing similar types of goods, each firm may have an inelastic demand for its own brand, which at the same time constitutes a barrier to entry of new competitors.

Product differentiation is a well-defined theoretical concept resting on two conditions. First, buyers must recognize that goods ("brands") belonging to a product class are close substitutes for one another but face only relatively poor substitutes with goods outside the class. At the same time, these brands must be sufficiently imperfect substitutes that each seller perceives his brand to face a downward sloping demand curve.

The structural bases of product differentiation are related to the buyers poor access to relevant information sources other than advertising and, the economies of scale in advertising (Caves 1985:113). It seems suggesting a connection between product differentiation and groups of firms given the greater scale economies in distribution derived of groups as a predominant pattern of organization of large scale business (Leff 1979a:53).

Branding of consumer goods by the producer is normally associated to fixing uniform prices at the retail level, practice known as resale price maintenance (Clay 1955:21). In general, the area of retail pricing has been largely neglected in the great majority of textbooks on microeconomic theory (Bliss 1988:376). Theories of resale price maintenance differ strongly on the presumable anticompetitive effects. Its proponents argue that it promotes efficiency by protecting against free riding on both product specific and storewide retailer services. On the other hand, its opponents argue that it restricts output and increases consumer prices,leading to a reduction in consumption and thus to a potential monopoly welfare loss (Ornstein 1987:1).

Resale price maintenance requires mechanisms of enforcement to be successfully applied. In the case of non-durable consumer goods this task is more complex because of the great number of retail firms involved. A different picture exists in durable consumer goods where exclusive distribution agreements are possible given a less number of distributors. This practice is generally justified on the grounds of providing an appropriate service of maintenance and spare parts. However, it can be also used as an instrument to restrict price competition at the distribution level.

The determination on a case-by-case basis of social costs and benefits of resale price maintenance and exclusive distribution system in differentiated products is a task to be performed in the context of application of antimonopoly legislation, rendering illegal the mechanisms of enforcement of restrictive trade practices applied by manufacturers against distributors.

With regard to the connection between conglomerate or integrated group of firms and anticompetitive practices at the production level, business strategies such as vertical integration and, conglomerate diversification are viewed simultaneously as cause and effect of market imperfections.

On the one hand, vertical integration and diversification are conceived as responses to imperfection of markets, particularly in developing countries (Leff 1979:323). On the other hand, there is a connection between these strategies and anticompetitive practices. According to Levy diversification makes feasible setting prices below variable costs in certain markets, practice known as predatory pricing or cut-throat, because of three reasons: a) access to internal sources of finance enables the diversified firm to outlast rivals in a price war, b) multimarket contact may also encourage predation because the informational benefits of a reputation for predation spill over to other markets, and c) transfer of the firms investments in sunk cost assets (Levy 1989:227). And, vertical integration to production of inputs or distribution can be used to enhance price discrimination against competitors and blocking the entry of new firms (Jacquemin 1982:21).

b. At the level of foreign trade

Monopoly power in the domestic market is viewed as a condition to succeed in an export-oriented strategy. According to the evidence on French industries in the early years of the Common Market (Auquier 1980:203), the percentage of manufacturing firms that export increased strongly with the size of firm within industries. The explanation is that large firms facing lower elasticities of demand in the home market are better equipped to profit from price discrimination between domestic and foreign markets (Auquier 1980:218). A policy implication of this analysis is that restrictive trade practices should be evaluated considering its impact on export effectiveness.

On the other hand, the literature on multinational corporations presents considerable evidence about the negative impact of restrictive trade practices of MNCs on export capacity of developing countries, because MNCs establish restrictions to its subsidiaries for exporting to certain markets (Long 1981:45).

In the context of free trade agreements among developed countries, the regulation of restrictive trade practices of MNCs is a major component of the unification of national markets. At the theoretical level, in the absence of market imperfections elimination of tariff and non-tariff barriers should lead to a free competition in the common market. However, in the case of two duopolists, the foreign and domestic firms would be expected to engage in either collusive or non-collusive behaviour that would result in constrained output and price above marginal cost (Krugman 1989:1179).

At the empirical level, evidence on European countries supports the proposition that import liberalisation and antimonopoly legislation are complementary rather than substitutes. In 1985 a West German study found that collusiveness in domestic markets did not decrease despite a substantial increase in foreign trade (Friberg 1991:620). Cartels of importers and market-sharing agreements of MNCs operates as non-visible barriers to free trade.

1.2. The interest group approach

An earlier version of the interest group approach states that even if the supposed rationale for regulation is the public interest, in the implementation stage certain groups capture regulatory agencies shaping policies to their own interests. According to this view, antimonopoly legislation is oriented to preserving the status of each producer rather than competition. The welfare of specific groups is emphasized, not the general welfare.

The "capture theory" of regulation has been criticized because it does not provide an explanation as to why regulators should be captured as its hypothesized (Spiller 1986:18). Particularly in the case of antimonopoly legislation, this view fails to explain two questions. Firstly, how smaller firms, supposedly beneficiaries of regulation of competition can have a greater influence on government than larger corporations. Secondly, considering that antimonopoly regulation, unlike other business regulatory policies, is not concerned with one or a few industries but carries a broader scope, the condition of a concentrated clientele for capturing regulatory agencies is not fulfilled (Greenhut 1989:146).

To overcome these limitations a latter version of this approach assign significant weight to the influence and power of bureaucrats and/or commissioners in the enforcement of antimonopoly legislation (Greenhut 1989:147).

A more general interpretation of this approach contends that the enactment of a regulation requires the development of a political coalition. Even if the stated rationale for a regulation is the "public interest" (e.g. to correct for externalities or for the inefficiences arising from the exercise of market power), its enactment may need the support of one or more groups which, in turn will require regulatory adjsutements to their own interests (Spiller 1986:43).

In this perspective, the main role of regulatory agencies is the distribution of wealth among different groups in the society. Despite its autonomy regulators respond to political pressure but they are not supposed to promote solely the interests of consumers or producers as a whole, but of particular groups at both sides (Spiller 1986:20).

It should be noted that the prevalent analysis of politics and policy implementation in developing countries emphasizes lack of organization of non-large business interests as one of the major characteristics of policy-making process. "Interest aggregating structures tend to be weak in the Third World. Interest groups are ineffective as structures for presenting collective demands to the political leadership. Frequently, there are few organizations in existence that are capable of representing the interests of broad categories of citizens and formulating policies responsive to their particular needs. Those few that are effective in this role tend to be the creatures of wealthy and powerful groups such as bankers, industrialists, and landowners" (Grindle 1980:16).

The above analysis supports the view that designing and enforcing antimonopoly legislation is unlikely because of lobbying of large private business groups (Leff 1979:732). In the absence of organization of consumers and small firms to countervail the power of large business groups, "the general perception in less-developed countries is that the groups possess determining (and pernicious) influence in economic policy-making"(Leff 1979:729).

II. Comparative analysis of antimonopoly legislation in the European Economic Community, United Kingdom and India

2.1 Institutional background

2.1.1 European Economic Community

The European Economic Community has a special set of institutions to handle its policy-making process. These are the Council of Ministers, the Commission, the Parliament and the Court of Justice. The Commission consists of seventeen members, each one has responsibility for one or more major EC policies and, it is organized in general directorates. The directorates are not only responsible for the initiation of proposals and, if accepted, of an EC decision; they are also involved in the administration of policy once it is agreed. One area of work in which the Commission is administratively concerned is competition policy.

2.1.2 United Kingdom

Under the Monopolies and Restrictive Practices (Inquiry and Control) Act of 1948, a Commission was set up to investigate particular industries where firms were thought to enjoy market power and to report whether they did in fact and, if so, what effects resulted and whether they were contrary to the public interest. Further modifications in the legislation separated the functions of regulating mergers and restrictive trade practices in two organizations: the Monopolies Commission and, the Office of Fair Trading.

2.1.3 India

The Government of India enacted the Monopolies and Restrictive Trade Practices Act which came into force on June 1,1970 and set up an independent agency called the Monopolies and Restrictive Trade Practices Commission, to investigate restrictive trade practices and to pass necessary orders to control them.

2.2. Objectives and policy approach

2.2.1. European Economic Community

The general directorate of competition policy has clearly stated three main objectives of EEC policy in this area which reflect a combination of microeconomic, industrial organization and, socio-political factors. Firstly, the encouragement of amalgamation of firms by mergers, acquisition of holdings, establishment of joint subsidiaries or other means, in order to increase productivity and technological research and development. Secondly, the prohibition of cartels, anticompetitive and restrictive trade practices such as predatory pricing, price discrimination, resale price maintenance, market sharing agreements, export bans and, exclusive distribution agreements among others which have the effect of restricting actual or potential competition. And, thirdly, the promotion of small and medium-sized enterprises.

The objective of promoting industrial concentration is based on the argument of scale economies discussed above. It has been clearly stated that "larger enterprises are better able to adapt themselves to Europe's expanding internal market and to keener international competition than are smaller ones, as these find themselves at a disadvantage particularly over raising capital and financing technical research" (EEC report 9:70).

On the other hand, it is recognized that a highly concentrated market structure creates the incentive for collusive behaviour which leads to a monopoly situation. The control on cartels and restrictive trade practices is intended to avoid monopolistic effects on prices and output. Likewise, the prohibition of anticompetitive practices of dominant firms oriented to eliminate competitors or blocking entry of new firms, holds a similar objective.

The concept of monopoly or dominant position is closely associated to the category of group of firms analyzed in the literature on industrial organization. "A dominant position cannot be determined simply by considering an enterprise's share of the market or other quantitative features. A dominant position may have its roots in production, distribution or financial strength. The firm concerned should be seen in the context of all its economic relations" (EEC report 9:75).

With regard to the objective of promoting small and medium-sized enterprises, there are three basic instruments based on competition legislation: a) approval of joint purchasing or selling arrangements in order to increase its competitiveness and bargaining power with larger firms, b) state aid granted exclusively to small and medium-sized firms, particularly loan guarantees, for improving its access to capital markets, and, c) legal protection from anticompetitive practices of dominant firms, mentioned above.

The socio-political nature of this objective is reflected in several resolutions of the European Parliament claiming that "small and medium-sized undertakings are of the greatest importance, not only for the economy and the gainfully employable population but also above all for the development of a free and democratic society in Europe" (Res.European Parliament 1982). Thus, it is considered by European Parliament that "action against misuse of dominant positions and excessive concentration is not only in the general interest but also a condition for the survival of small and medium-sized undertakings" (Res.European Parliament 1978).

2.2.2. United Kingdom

In contrast with the EEC, the objectives of UK antimonopoly policy are not explicitly formulated. The analysis of both the Restrictive Trade Practices Act 1976 and the Fair Trading Act 1973 shows that UK policy holds a prohibitive approach similar to that stated in article 85 of EEC Rome Treaty. It consists in declaring inapplicable the prohibition on restrictive agreements in case of existence of countervailing factors. However, the criteria for assessing economic advantages of restrictive agreements in the UK are broader than applied by EEC. While in EEC law anticompetitive effects may be offset by economic considerations relating to "improving the production or distribution of goods or to promoting technical or economic progress" (Article 85 Rome Treaty), in the UK assessing criteria of business practices incorporate other elements such as public safety, local employment, regional disparities and export effectiveness.

2.2.3. India

The origins of antimonopoly legislation in India suggest that it was conceived mainly as a response to the phenomena of concentration of economic power in private hands rather than to the existence of restrictive trade practices. It is confirmed by the fact that the Monopolies Inquiry Commission set up by the Indian government in 1964 to propose antimonopoly legislation "made a very comprehensive study on the concentration of economic power but could not make such detailed study on restrictive trade practices" (Krishna 1989:427).

According to Nyrop, industrial concentration in India has been an object of controversy since political independence. In the colonial period there was a strong tendency for ownership or control of much of the large-scale private industrial economy to be highly concentrated. The institution of managing agencies was an important instrument of concentration through diversified investments and interlocking directorates. This organizational business pattern was kept during two decades after independence because of its importance for developing Indian industries, notably textiles,cement,sugar and paper products, given its access to London money markets. In the period 1969-71 the government abolished the managing agency system which significantly reduced the level of industrial concentration in highly concentrated branches (Ghosh 1975:220).

These developments explain why Indian antimonopoly legislation received strong support at the political level. As Marathe has pointed out "influential members of Parliament from the ruling party as well as the Opposition, academicians and others involved in moulding public opinion demanded greater and more effective regulation especially in order to control 'monopoly' of the large houses and to assist or protect the weak. Thus, the licensing system was to be used to limit growth of capacity so as to prevent unhealthy competition and to encourage new entrepreneurs by denying licenses to 'large houses'in specified areas of activity" (Marathe 1986:15).

The predominance of the socio-political view in India explains the basic differences between the Monopolies and Restrictive Practices Act of India and its source of inspiration the British antimonopoly legislation.

Firstly, while since 1980 UK legislation applies to both private and public enterprises, Indian legislation still exempts to public enterprises from anti-monopoly control.

Secondly, the Indian approach to control of concentration holds a different nature and a wider scope than British anti-monopoly policy. In fact, prohibiting the expansion of larger firms, including not only mergers but also new investments, in those areas where smaller units were competing, is a single characteristic of Indian anti-monopoly legislation.

The reservation of certain areas for small scale firms is an extension of the concept of exclusive rights of exploitation holds by the state. As an instrument of planning its objective is concentrating the expansion of 'Larger Houses' in core or heavy investment industries which due to real scale economies can only be developed by a few number of large firms (Paranjape 1982:956).

With regard to the second objective of Indian anti-monopoly legislation, to control restrictive trade practices, the approach is not prohibitive per se. Like UK, restrictive agreements are individually evaluated to determine to what extent public interest is being affected. Although there is some overlapping in the assessing criteria of public interest in India and UK regarding to the effect on the general level of employment in some areas, and, export trade, Indian legislation includes other considerations such as defence and security of the State and, protection against outside monopolies.

2.3 Mechanisms of detection and investigation

There are three essential mechanisms of detection: registration of agreements, information provided by affected private parties and, monitoring of business conduct and performance.

The registration system used by the enforcement commissions in the EEC, UK and, India is rather similar. It is based on the principle that firms must declare the existence of formal agreements or contracts because of the importance of legal validity for its operation. It supposes that risk of becoming legally unenforceable disincentive the existence of unregistered agreements. It is particularly true in the case of mergers and takeovers whose registration is unavoidable. However, certain restrictive business practices are not necessarily formalized through a contract or agreement.

With regard to the detection of anticompetitive practices which do not consist of a formal agreement, such as in the case of predatory pricing, the involvement of affected private parties, consumers or competitors, through provision of information to the enforcement commission is the essential mechanism recognized in the EEC, UK and India. This mechanism is also applied for detecting anticompetitive effects of registered or unregistered agreements, particularly in those cases of application of unwritten rules in business practices.

The monitoring of business conduct and performance as an instrument for detecting anticompetitive or restrictive trade practices is formally recognized in antimonopoly legislation procedures of EEC, UK and India. It seems that this mechanism is less effective for detecting informal cartels because of the difficulty of establishing proxy indicators. For instance, uniformity in price variations not necessarily indicates the existence of cartels, it can be revealing only the presence of price leadership. However, certain restrictive trade practices, namely resale price maintenance and price discrimination, can be identified through price surveys.

The usefulness of mechanisms of detection depends to a great extent on the investigation powers of enforcement commissions. In the EEC, the commission's powers of investigation are extremely wide-ranging. Regulation 17 empowers the Commission to request information from any firm, by way of letter or a formal "decision", concerning all aspects of the market and its conduct and activities. This requirement is backed up by heavy penalties which may be issued by the Commission for false, delayed or incomplete information. In addition, where the commission considers that information may be concealed or destroyed, it may mount a surprise visit, or "dawn raid", on the offices of the firm, in order to examine documents and to take copies.

In contrast, in the UK and India investigation powers of commissions are very limited. The Director General of the Office of Fair Trading in the UK can only exercise his investigatory powers if a reasonable cause exists in fact. It limits investigation based on proxy indicators as result of monitoring and also actions for completing information presented by consumers.

The powers available to the Director-General, to uncover covert agreements, are not, in the strictest sense of the word, investigatory. They are more an enforcement mechanism to back up the requirement in the legislation that agreements should be registered. If the Director General has reasonable cause to believe that a firm which should have registered an agreement has failed to do so, he can issue a formal notice under section 36 of the Act requiring that firm to give details of all registrable agreements to which they are a party. However, it should be noted that under English law, the requirement that the Director-General should have "reasonable cause to believe", requires a fair degree of certainty on the part of the office that a cartel exists before the notice can be issued. The test is not satisfied if the Director-General has only suspicions. As Walker has pointed out with regard to detection of cartels, "it is not enough that prices in the market may have moved in a fashion consistent with the existence of a cartel, or that there is a general belief among costumers in an industry that a cartel exists. Before a notice can be issued the Director-General must normally know the names of at least some of the participants and have a good idea as to how the cartel operates and when (and ideally where) the parties meet" (Walker 1991:71).

In this connection, it has been reported a case about a consumer who asked the Office of Fair Trading to consider bringing an action against a number of manufacturers thought to be engaged in a price-fixing agreement. The OFT told the complainant that it would have to provide detailed factual evidence on product costs, prices, profitability, technology and varying levels of demand. The consumer was unable to commit himself to the research effort required (Frazer 1988:131).

A recent study on Indian antimonopoly legislation shows a weak involvement of private parties in its enforcement. Only in 26 cases out of 27,541 registered agreements consumers or consumers association have complained about harmful effects of business practices (Krishna 1989:430). This fact has been attributed to lack of organization of consumer movement, characteristic of most developing countries.

Likewise, in any case smaller firms have claimed being affected by anticompetitive practices, despite the existence of 48 cases on limiting, restricting or withholding output or supply by monopolistic producers to their potential or existing competitors. Lack of involvement of private parties, explains why only in 16 cases out of 499, large firms have argued that registered agreements have some of the eleven positive effects recognized in the legislation as countervailing factors of restricting competition. Although the reasons may be that "companies think that they will not be in a position to defend the alleged restrictive trade practices, or that the companies do not wish to disclose confidential market information" (Krrishna 1989:433), it seems that a more important factor is that in the time between registration and evaluation, firms realized of absence of complaints regarding to business agreements.

Apparently, lack of responsiveness of presumable beneficiaries of Indian antimonopoly legislation would reflect weakness of organization of less powerful interests, namely consumers and small firms, to countervail the power of large business groups. However, stakeholder analysis of EEC cases show that neither consumers nor small firms have been involved as complainants in the process of investigation of anticompetitive practices.

III. Stakeholder analysis of EEC Competition Commission decisions in the period 1977-87

The main purpose of analyzing the cases of anticompetitive practices is determining which private parties have been involved as complainants, namely consumers or smaller firms competitors of large firms, and its relative importance as mechanism of detection of restrictive practices.

3.1 Methodology

The methodology consists of two steps. First, selecting those decisions which have involved corrective measures, namely fines or declaration of infringement of relevant articles of Rome Treaty. Second, classifying the information contained on the competition reports according to three variables: a) origin of the investigation, complaints of private parties, notification of agreement or monitoring of Commission, b) product and, c) type of anticompetitive practice.

3.2 Results

In the period 1977-1987, complaints of private parties were the main source of detection of anticompetitive practices. In 22 cases out of 51, formal complaints were the origin of investigations of the general directorate of competition policy, followed by monitoring (16 cases) and notification of agreements (13 cases). The complaints have been mostly referred to restrictive trade practices and have involved mainly distributors and dealers. There is only one case of a large independent producer which was by predatory pricing of a multinational group (case AKZO versus ECS). In any case it has been reported complaints of individual consumers or association of consumers.

EEC Decisions on anticompetitive practices

1977-87

Origin	Product	Type of practice
Complaint indep.firm	Reparation cash registers	Refusal to supply spare parts
Notification	Video casset. recorders	Technological agreement
Notification	Scotch Whisky	Price discriminat
Monitoring	Packaged spices	Exclusion of compe prod.in distributi
Complaint dealers	BMV cars	Export ban
Monitoring	Vegetable parchment	Importers cartel
Complaints trade firms	Tobacco	Resale price maintenance
Monitoring	Bell extra Whisky	Export ban
Monitoring	Nitrogenous fertilizers	Cartel producers
Complaint merchant	maize seeds	Exclusive dist. agreement
Notification	explosives	Export ban
Complaints dealers	Kawasaky motorcycles	Price discrimination
Monitoring	White lead	Cartel

Complaint producer	Ethanol	Purchasing agreem. bet.two competitor
Notification	Compound fertilizer	Joint sales agency
Notification	Rennet, milk ferment	import prohibition cooperative member
Complaints trade firms	Pionner Hi-fi equip.	Price discrimination
Notification	Gravindex pregnancy test	Price discrimination
Notification	Cognac	Resale price maint
Monitoring	Cast glass	Cartel
Complaint trade firms	tyres michelin	Resale price maint
Complaint trade firms	T.V Telefunken	Resale price maint
Complaint of retailer	Trade book betw. Netherlands and Flanders	Price discriminat. to non-associated retailers
Complaint of Central Wine Buyers	Champagne Moet et Chandon	export ban
Complaint of retailer	Hasselblad cameras	reselling restrict among EEC countr.
Monitoring	Washing machines	discrimination in conformity label

Notification	Cigarrettes	cartel,retailer bonus scheme
Notification	Right-hand drive Ford vehicles	stopping resell from Germany to UK
Notification	imports of Colombian coffee	export ban
Notification	Cognac	fixing minimun selling prices
Monitoring	Rolled zinc products	restricting parallel imports
Complaint of trade firm	Toltecs Tobacco	restriction imports in RFA
Complaints many traders	Sailboard	prohibition sell outside terri
Complaint ECS	Chemical inputs	predatory pricing
Monitoring	Cast iron	cartel
Notification	Nutricia health and baby foods	non-competition clauses bet.subsid
Complaint of importer	Import of Italian toys into France	Exclusive distrib. agreement
Monitoring	Flat glass	Cartel
Monitoring	Zinc	Cartel
Notification	Fittings for plumbing	Prohibit.of sell non-members of net
Monitoring	Hidrogen peroxide	Market-sharing agr bet.EEC producers

Complaint of Farmers Assoc.	John Deere agric.machinery	export ban, price discrimination
Monitoring	Wood pulp bleached sulphate	cartel, concerting prices
Notification	Aluminium imports from Eastern Europe	Exclusive imports two firms
Complaint of dealer	Harvesters and agricult.machinery	agreem.bet.produce discourage reexpor
Monitoring	Polypropylene	Cartel
Complaint of firm	Roofing felt	Cartel
Monitoring	Fatty acids	Cartel
Complaints of trade firms	Correction prod. paper,fluids,tapes	Refusal to sell to firm which rese
Monitoring	Pharmaceutic. Sandoz	export ban
Complaint of traders	Pre-school toys	import parallel bans
Monitoring	PVC	Cartel

Source: EEC Competition Reports

3.3 The case of AKZO versus ECS

The analysis of this case is relevant for two reasons. First, it is the only case of barriers to entry of new competitors in the production of goods, imposed by a multinational group. Second, the general directorate of competition policy considers it as an outstanding example of how EEC antimonopoly legislation can protect to small and medium-sized firms from the predatory pricing of a dominant company.

According to the fifteenth report on competition policy (1985), ECS (Engineering and Chemical Supplies Ltd.) is a small producer of benzoyl peroxide in the United Kingdom, with activities mainly in the field of "fluor additives", a small market existing only in the UK and Ireland. It had planned to expand its activities to the wider and more lucrative EEC market for organic peroxides for the plastic industry, particularly by exporting to chemical companies in Germany. The firm AKZO is the most powerful undertaking in both these sectors.

In 1982 ECS complained formally to the Commission that AKZO Chemie had contravened article 86 of Rome Treaty over a long period by (i) threatening that it would take reprisal by way of selective price cuts to attract ECS's customers in flour additives unless ECS abandoned the plastics sector and, ii) implementing those threats despite the existence of a Court order from the High Court in London.

The idea was to destroy or weaken ECS's base in flour additives, which then accounted for 80 per cent of its turnover, so as to stop any expansion into the plastics sector. The UK flour additives sector is of little importance to AKZO compared with the EEC organic peroxides market for plastics and it could afford to sustain losses in this specialized sector to protect its position in the bigger market. The UK market structure of flour additives shows that AKZO holds a share of 52%, followed by ECS with 35% and a third firm Diaflex with only 13%.

Although there is not a clear definition of small and medium sized firms in the EEC context, one of the criteria used by the EEC Commission to delimitate this category of firm is its limited access to banking credit. At this respect, the report points out that access to banking credit of ECS made possible its survival against predatory pricing. A corollary is that even in the presence of predatory pricing against small firms, antimonopoly legislation is unable to effectively protect them because investigation process takes considerable time. In this case the time between formal complaint and the ceasing of predatory pricing was two years.

It should be noted that Diaflex, the smallest firm supposedly the most affected by predatory pricing did not support ECS in the litigation process because of its dependency on AKZO.

These considerations suggest that in concentrated market structures competition arise between groups of firms and large independent firms. Anticompetitive practices against small firms seem a rare case because the relationship between large and small firms is one of dependency rather than rivalry.

IV. Conclusions

1. Lack of responsiveness of intended beneficiaries of antimonopoly legislation, consumers and small and medium-sized firms, is a common characteristic of the policy experiences of EEC, United Kingdom and India. This fact can not be attributed to the low level of organization of its beneficiaries. In the case of consumers, its limited access to information concerning restrictive business practices explains its lack of participation in detecting its harmful effects. With regard to small and medium-sized firms, its condition of beneficiaries of antimonopoly legislation its doubtful because the relationship between small and large producers is of dependency rather than competition.

2. The significant participation of trade firms and dealers in the detection of restrictive trade practices in the EEC, suggests that the most important element to get benefits of enforcement of antimonopoly legislation is its access to information on business restrictive practices rather than its level of organization as interest group.

3. In this context, the existence or absence of a political coalition does not explain the relative strengths or weaknesses of antimonopoly legislation in the EEC, UK and India. A more important factor is the presence of a clearly identifiable public interest. The strong investigatory powers of EEC enforcement commission are consistent with the existence of an unambiguous notion of public interest, to remove barriers to intra-trade between EEC countries. On the other hand, the degree of weakness of enforcement of antimonopoly legislation in UK and India, is in direct relation with the relative importance of tradeoffs in the notion of public interest. The smaller size of internal markets and business groups in India increases the likelihood of contradiction between antimonopoly objectives and other national objectives, particularly in the area of foreign trade policy.

BIBLIOGRAPHY

Auquier,A.A.(1980),"Size of firms,exporting behavior, and the structure of French industry",in The Journal of Industrial Economics vol.XXIX No.2 pp.203-218.

Bliss,C.(1988), "A Theory of retail pricing", in The Journal of Industrial Economics vol.XXXVI june No.4, pp.375-391.

Caves, R.E and M.E Porter (1978), "Market structure, oligopoly and stability of market shares", in The Journal of Industrial Economics vol.XXVI june No.4, pp.289-313.

Caves,R.E and P.J.Williamson (1985),"What is product differentiation,really?",in The Journal of Industrial Economics vol.XXXIV No.2,pp.113-132.

Chandra, N.K (1977), "Monopoly legislation and policy in India", in Economic and Political Weekly vol.12 No.33/34, pp 1405-1418.

Clay,H.(1955),"Resale price maintenance",in The Journal of Industrial Economics vol.III.

Commission of the European Communities(1966), Ninth general report on the activities of the EEC.

Commission of the European Communities(1967), Tenth general report on the activities of the EEC.

Commission of the European Communities(1980), Tenth report on competition policy.

Commission of the European Communities(1984), Fourteenth report on competition policy.

Commission of the European Communities (1985), Fifteenth report on competition policy.

Encyclopedia of European Community Law(1990), European Community Treaties.

European Parliament Resolutions (1978-82), Resolutions on question relating to small and medium-sized undertakings in the Community.

Feinberg, R. (1986), "The effects of European competition policy on pricing and profit margins" in Kyklos vol.39 Fasc.2, pp.267-287.

Fejo,J.(1990), Monopoly Law and Market, studies of EEC competition law with US American antitrust law as a frame of reference and supported by basic market economics, Kluwer publishers, Boston.

Frazer, T. (1988), Monopoly, competition and the law: the regulation of business activity in Britain, Europe and America, Wheatshef books, Sussex.

Friberg, E.and C.Thomas (1991), "Is antitrust obsolete?", in Journal of Economic Issues vol.XXV No.2 june, pp.617-624.

Ghosh,A.(1975), "Concentration and growth of Indian industries 1948-68", in The Journal of Industrial Economics vol.XXII march No.3, pp.203-222.

Gilmour,D.R.(1981),"The enforcement of Community law by the Commission in the context of state aids:the relationship between articles 93 and 169 and the choices of remedies", in 18 Common Market Law Review, pp.63-77.

Gomulka,S.(1990), The theory of technological change and economic growth, Routledge.

Greenhut, M.L and B.Benson (1989), American antitrust laws in theory and in practice, Avebury, New York.

Grindle, M. (1980),"Policy content and context in implementation" in Politics and Policy Implementation in the Third World, pp.334.

Grindle, M.and J.Thomas (1989),"Policy makers, policy choices and policy outcomes: the political economy of reform in developing countries", in Policy Sciences 23:213-248.

Harden, I.J (1990), "The approach of English law to State aids to enterprise", in European Competition Law Review 3, pp.101-110.

Hilke, J. and P.B Nelson (1988), "Diversification and predation" in The Journal of Industrial Economics vol.XXXVII september No.1, pp.107-111.

Holton, R.(1966), "The role of competition and monopoly in distribution", in Competition, cartels and their regulation ed. by J.P.Miller, North-Holland Publishers.

Hughes,A.,D.Mueller and A.Singh (1984), Competition policy in the 1980's:the implications of the international merger wave, Economics Reprint No.86.

Jacquemin, A.,E.de Ghellinck and C.Huvenners (1980), "Concentration and profitability in a small open economy", in The Journal of Industrial Economics vol.XXIX december No.2, pp.131-144.

Jacquemin,A.(1982) Economia Industrial: estructuras de mercado y estrategias europeas de empresa. Barcelona Editorial Hispano-Europea S.A.

Kamerschen,D. and L.Valentine (1981), Intermediate Microeconomic Theory, Ohio,USA.

Kirkpatrick,C.H.,N.Lee and F.I.Nixson (1984), Industrial structure and policy in less-developed countries, Allen,London.

Krishna Rao,P.V and K.P.Sastry (1989), "Restrictive trade practices policy in India", in The Journal of Industrial Economics vol.XXXVII june No.4, pp.427-435.

Krugman,P.R.(1989),"Industrial organization and international trade", in Handbook of Industrial Organization, ed.R.Schmalensse, Amsterdam, North-Holland pp.1179-1223.

Lall,S.(1983), The New Multinationals: the spread of Third World enterprises, Wiley.

Lanning,S.G.(1987),"Costs of maintaining a cartel",in The Journal of Industrial Economics vol.XXXVI No.2 pp.157-174.

Leff,N.(1979a), "Entrepreneurship and economic development:the problem revisited" in Journal of Economic Literature vol.XVII, march pp.46-64.

Leff,N.(1979b),"Monopoly capitalism and public policy in developing countries", in Kyklos vol.32, fasc.4 pp.718-738.

Levy,D.(1989),"Predation, firm-specific assets and diversification",in The Journal of Industrial Economics vol.XXXVIII No.2, pp.227-233.

Long,F.(1981), Restrictive Business Practices, Transnational Corporations and Development: A Survey. Nijhoff publishers.

Marathe,S.S.(1986),Regulation and Development:the Indian policy experience of controls over industry, Sage Publications.

Meller, P.(1978),"The pattern of industrial concentration in Latin America", in The Journal of Industrial Economics vol.XXVII september No.1, pp.41-47.

Miller, J.P (1962), "Antitrust policy: the United States experience", in Competition, cartels and their regulation, North Holland Publishing.

Nyrop,R.F.(1985), India: a country study, area handbook series.

OECD(1977), Restrictive Business Practices of Multinational Enterprises, Report of the Committe of Experts on Restrictive Business Practices, Oecd publications.

Ornstein,S.I.and D.M Hanssens.(1987),"Resale price maintenance:output increasing or restricting? the case of distilled spirits in the United States",in The Journal of Industrial Economics vol.XXXVI No.1,pp.1-18.

Paranjape,H.K.(1982),"The vanishing Monopoly and Restrictive Trade Practices Act, will only the grin remain?", in Economic and Political Weekly vol.17 No.23, pp.955-961.

Robinson,J.(1954),"The impossibility of competition," in Monopoly and competition adn their regulation. Papers and Proceedings of a Conference held by the International Economic Association, ed.by E.Chamberlin, London, Mc.Millan.

Shaw,R.W and P.Simpson (1986), "The persistence of monopoly: an investigation of the effectiveness of the United Kingdom Monopolies Commission", in The Journal of Industrial Economics vol.XXXIV June, no.4,pp.355-372.

Shirley,M.(1983), Managing State-Owned Enterprises, World Bank Staff Working Papers No.57.

Spiller, P.(1986),The political economy of industrial regulations:a survey with implications for regulation studies in developing countries, World Bank Discussion Paper.

Teitel,S.(1975),"Economies of scale and size of plant:the evidence and the implications for the developing countries", in Journal of Common Market Studies vol.XIII, 1 and 2, pp.92-115.

Temple Lang,J.(1981),"Community antitrust law: compliance and enforcement", in 18 Common Market Law Review pp.335-362.

Unctad (1979), First draft of a model law or laws on restrictive business practices to assist developing countries in devising appropriate legislation, Unctad secretariat, New York.

Verma,S.K(1988),"International regulation of restrictive trade practices of enterprises", in Indian Journal of International Law vol.28 No.3 & 4, july-december pp.389-412.

Walker Smith A.(1991),"Collusion:its detection and investigation", in European Competition Law Review vol.12 issue 2,pp.71-81.

White,L.(1974a),"Pakistan's industrial familes:the extent, causes, and effects of their economic power", in The Journal of Development Studies vol.X april/july No.3-4, pp.273-304.

White,L.(1974b),Industrial concentration and economic power in Pakistan, Princeton University Press.